Town of Milford
Zoning Board of Adjustment Minutes
June 19, 2014
Case #2014-08
Nathan and Brooke Langlais
Equitable Waiver

Present: Zach Tripp, Chairman
Laura Horning, Vice Chair
Fletcher Seagroves
Mike Thornton
Joan Dargie

Katherine Bauer – Board of Selectmen representative

Excused:

Secretary: Peg Ouellette

The applicant, Nathan and Brooke Langlais, owners of Map 29, Lot 164, located at 9 Willow Street, in the Residence A District, are requesting an equitable waiver of dimensional requirements from Article V, Section 5.02.5:B, for a deck constructed four (4) feet +/- from the side setback line where fifteen (15) feet is required, in accordance with Article X, Section 10.07.0

Minutes approved on September 4, 2014

Z. Tripp, recently-elected Chair, was not present at the previous meeting on this case. He handed the meeting over to Acting Chair F. Seagroves. He opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures and then introduced the Board. The notice of hearing was read into the record. F. Seagroves stated this case was tabled from the June 5, 2014 meeting. One of the reasons was to get more information from the office (Building & Planning). He asked the Board if they were still familiar with what was discussed at the previous meeting or if they wanted the applicant to do his presentation again.
L. Harten stated theoretically they were starting over. F. Seagroves agreed.
L. Harten asked if there was input from the Building Dept. and whether it would be read into the record.
F. Seagroves said yes, and it would be read into the record. There were also three correspondences received from two abutters and one resident of the area.

M. Thornton said the issue was clear; it wasn't the quality of the deck. The issues were the location of the deck and the construction without a permit. He didn't see any other issues unless another Board member had any.
F. Seagroves said one of the main concerns was what the building inspector found. He asked if they should read his letter to start off. The memo from Tim Herlihy, Deputy Building Official dated June 10, 2014 was read into the record, which stated the time line of the violation's coming to the office's attention, the notice of violation, stop work order and the requirements given to Mr. Langlais, as well as the option to request a special exception.
L. Harten asked whether the Board was dealing with the overhangs that were over the door.
F. Seagroves said not at that time.
M. Thornton said there appeared to be a pattern of not getting a building permit and if anyone bothered him about not having one, he would get a permit later.
L. Horning said there are guidelines and that was why it was blatant disregard or obfuscation .The board has to look at each property as unique and the equitable waiver that is being requested for that purpose. The memo flew in the fact of some of the testimony heard previously regarding disregard for the zoning ordinance as a whole in continuing to build.
M. Thornton asked if, according to the memo, he didn't continue to build.
L. Horning he did.
M. Thornton said, because it said it was in process. From the first meeting he understood was a short step portion was removed from the side property because it necessitated going onto the adjacent property. Then it said he was already 10 or 12 ft from the property line. He couldn't reconcile those two statements.
F. Seagroves said applicant didn't know where the property line was when he started.
M. Thornton stated it was the applicant's responsibility.
F. Seagroves agreed.
L. Horning said it seemed was already well under way by the time it was addressed and they were talking about ten or twelve feet, and it was pretty far along.
M. Thornton said it was much closer than 10 to 12 feet.
F. Seagroves stated those steps were removed and what he saw mentioned was plans to build and replace some items. Many people think if you are replacing you don't need a permit.
M. Thornton said a statement had been made they had done enough work that he knew permits were required.
L. Horning said he had been notified.
J. Dargie making the point that they were replacing, they didn't know if previous permits were for new builds or replacement. Some people think if you are replacing something you don't need a permit.
F. Seagroves suggested asking the applicant to answer these questions.
N. Langlais and R. Todd came forward.
L. Horning asked about wording that they were replacing decking on the front porch and a large deck being built at the back and whether "replacing" referred to the front porch.
N. Langlais said he didn't think decking was considered structural.
L. Horning said he built the deck on the back, and he built the stairs which were not there before.
N. Langlais said that was correct.
M. Thornton said the deck could not be 10-12 feet from the property line, but obviously much closer.
L. Horning said it was on the property line. But the applicant was giving a series of events and those steps may not have been there at that time.
M. Thornton said at the time the deck was there and was closer than 10-12 feet.
L. Horning agreed.
M. Thornton said any statement that it was 10-12 feet was not accurate.
L. Horning agreed.

N. Langlais said those steps were no longer there.
R. Todd said the applicant agreed to take them off.
M. Thornton said he mentioned the stairs to show how close the deck was to the property line – not 10 to 12 feet.
R. Todd said the statement was made before the applicant knew the facts of where the boundary line was.
L. Horning said it was applicant's responsibility to know that prior to construction.
M. Thornton commented that was part of the building permit.
L. Horning said that was why permitting and zoning exist. As far as applicant being willing to remove the stairs, she didn't know it was willingness as much as a requirement. Applicant was on someone else's property.
R. Todd disagreed he was on someone else's property. L. Horning said if you stepped off the deck you landed on someone else's property.
R. Todd responded possibly.
J. Dargie asked if the deck went beyond the footprint of the house.
R. Todd said if the steps were removed, the deck itself didn't extend closer to the property line than the southwest corner of the house. The southwest corner approached the property line within 3.8 ft. and the deck as built was 4.3 ft, so it was basically the same.
L. Horning asked if the stairs being discussed were those pictured.
R. Todd said yes, those had been removed.
L. Horning said there were two sets of stairs on the deck and was making the point as to which set was being referred to.
R. Todd said the one on the west.
F. Seagroves asked if there were any further questions.
M. Thornton was concerned there seemed there was either intent or dereliction in not getting a building permit, almost as though "I'll go ahead and do it and then it will be an accomplished fact." He said it was not appropriate to this Board, but in other areas people have been required to remediate, and had a building permit been done the applicant would have known the property line and could have built the same size deck further back.
F. Seagroves commented it was the same footprint of the house other than the steps.
L. Harten said applicant was just increasing the non-conforming use.
F. Seagroves agreed and said that was acceptable.
J. Dargie asked, aside from not getting a permit, should they look at it as if he had one and came before them for a Special Exception or a variance.
F. Seagroves said he would still come for an equitable waiver for non-conforming, which is what he was currently doing.
J. Dargie asked if they were taking into consideration not filing a permit.
F. Seagroves said one question in the criteria addressed that.
L. Harten clarified, J. Dargie's question, that if applicant came before any construction it would not be for equitable waiver, but for special exception because he was increasing the size of the non-conforming use.
F. Seagroves agreed. He would have been in front of the building one way or the other.
L. Harten agreed.
F. Seagroves asked for the abutter list to be read. The list of abutters was read. Applicant Nathan Langlais was present. Abutters present: Robert Todd of PO Box 190, New Boston, Aaron Kaplan of 14 Adams St. Milford, and Myra Roebuck of 8 Willow St.
F. Seagroves opened the meeting for public comment.

Aaron Kaplan of 14 Adams St. came forward. He represents the trust that owns the property at 7 Willow Street. He spoke at the last meeting. They object to this waiver. He stated the steps in question hadn't been removed and the only reason they are proposed to be removed was because

the applicant was served notice to stop working and realized they were unaligned. It was known the deck was not where it should be. Mr. Kaplan referred to an iron pin at the back of the property and that fencing was removed and bushes, some of which were on applicant's property and some on Mr. Kaplan's property, were removed without permission. Applicant would have to see the iron pin. The 10-12 ft on the permit after violation was served didn't make sense; it was written to get it through building code. He said the surveyor, Mr. Todd, stated at the last meeting that the reason the stairs were being proposed to be removed was because the builder understood he had to step off onto another person's property. The paperwork submitted said 10-12 ft.; the date was prior to it being surveyed. The stairs were already taken out. The surveyor knew how close this was.
It says the southwest corner wasn't encroaching any further. Applicant's property is closer to the road, so previously applicant's property stopped about where Mr. Kaplan's began. He showed pictures currently and said the decking continues well past that. He showed pictures showing that previously the corner of the house at 9 Willow St was the closest structure to his house, approx. 27 ft. With the deck, it is about 18 ft or less, that is not less encroachment to describe the deck as unobtrusive was misleading. There was also a roof on the deck about 15-18 ft. from the ground. It is a very large deck. He believed there was intent; they were trying to skirt the zoning. He stated the description in the application for equitable waiver was inaccurate. He felt this was not an honest mistake. It intrudes on his property more than the old structure. Applicant filed three pieces of paper in 2009 in a building application and 2010 and 2011 renewals; on that paperwork there are checkboxes for decks and additions. This was intent to get around zoning while at the same time hurting a neighbor.
Sharon Densmore of 9 Orange St., southerly abutter for this property and 7 Willow St. She was surprised by the level of protest to this deck and the encroachment that is happening. Being the southerly property, the members of 7 Willow trust or their tenants had moved portions of fence and have encroached on her property, didn't notify her of construction, or when the driveway was put in and piling of construction material against the back fence, breaking it. Their building is not more than 10 ft. from the back property. She was surprised by claims of encroachment by owners of 7 Willow St. since they had shown no regard for her property or their property. She asked whether her letter would be read into the record and was told it would be. She said that was her testimony.
K. Bauer, 247 North River Rd. said that procedurally it seemed better for letters of record to be read before public comment because someone might want to respond and wouldn't be able to do so once public comment is closed. She also wanted to clarify that this was not about expansion of non-conforming use. It was about 4 ft. encroachment into the setback.
Ron Kaplan, part owner of 7 Willow St. responded to Ms. Densmore's comment that she wasn't notified about any work done. Permits were pulled, fencing was never removed. He may have pushed snow against the fence and will make sure it doesn't happen again. If applicant has to take down that portion of the deck he can re-use the lumber to go back within the setback.
A. Kaplan said one thing the Board has to consider is the cost to rebuild. It is minimal. It was a self-constructed deck and he can re-use the lumber. The expense is not as much as devaluation of their property which they have no way to mitigate.
Z. Tripp asked applicant to clarify that the picture was taken from the rear boundary line.
R. Todd said the property line is slightly to the left with respect to the view in the photo. The southwest corner was almost where the decking was attached is 3.8 ft. from the property line.
After questions to R. Todd from Board members, it was clarified that the actual setback from the closest point at the southwest corner of the deck which is 4.3 ft. from the property line and that the deck is new construction.
F. Seagroves said they were not encroaching.
R. Todd said except for those stairs.

Letters received from Sharon Densmore, owner of 9 Orange St., Michael MacDonald of 5 Willow St., and Martin J. Betelak of 16 Willow St., all of whom had no objections to the granting of the equitable waiver.
A. Kaplan responded that if he were to talk to friends and told them to write, he could. The deck doesn't encroach on any of those people's properties. By regulation you should have 30 ft. between property and applicants have taken it down to 18 ft. With two identical houses, value would be greater with a house with more distance between. Regarding the statement there are no windows, they can be seen in the photos.
S. Densmore said she was an abutter of the Langlais, but not a friend. She would venture the others were in the same classification. She wasn't solicited to write. She watched the previous meeting and saw what was happening. Also, regarding the windows, there are none in the west wall. Windows referred to are on the south wall.
L. Horning clarified the use of the word "encroachment." That means it is ON someone's property. That was not the case here. This is a boundary issue regarding the ordinance and a building permit.
J. Dargie asked, regarding 7 Willow boundary line, how far the house was to the property line.
A. Kaplan said 13 ft.
J. Dargie asked if that was when it was built?
A. Kaplan said it was originally 15 ft.
M. Thornton most of those houses were built before zoning.
R. Todd said he was engaged to provide land surveying. He carried out those duties and was asked to help put the application together and attend this meeting. He is not an advocate; if they wanted an advocate they should have hired an attorney, which he suggested. He does real estate appraisals, has done so for 30 years and has formal training in real estate appraisals. Appraisers make comparisons to other properties in the neighborhood and whether one kind of building is detrimental to someone else's appraisal. In this case he hadn't seen anything to affect the property to the west. It is no closer to the property line. If the deck was turned 90 degrees counterclockwise the same size deck would fit on the lot in compliance with the setback. From the perspective of an appraiser, as far as appeal, that would be more detrimental to surrounding properties.
A. Kaplan responded that any appraiser would first want to know if the deck was legal. He said it would not add to the value of his house than an illegal apartment. It detracts from Mr. Kaplan's property. He disagreed with statement that moving it further away and within zoning would hurt Mr.Kaplan's property.
There being no further comments, F. Seagroves closed the public comment portion of the meeting. He asked for questions from the Board.
L. Horning asked if the stairs were still there.
N. Langlais said there were.
L. Horning asked why they weren't removed.
N. Langlais said he was waiting for the outcome of this meeting.
J. Dargie said there was a stop order.
N. Langlais said the Building Dept. asked him not remove it without removing the whole porch.
J. Dargie asked if the property was officially surveyed.
N. Langlais said it was.
J. Dargie asked if R. Todd did the survey for him? N. Langlais said yes.
F. Seagroves moved to considering the four criteria.

1. That the violation was not noticed or discovered until after a structure in violation had been substantially completed or until after a lot had been sub-divided by the conveyance.

L. Harten said it was pretty hard, taking an objection decision on this. You would have to reach into the applicant's head. Did he know this was in violation prior to constructing the

deck? M. Thornton asked if he meant getting a building permit. L. Harten said that the violation was not noticed or discovered until after a structure in violation had been substantially completed. J. Dargie asked if that referred to being noticed by the building department? L. Harten felt it referred to the applicant. He would be guessing to say the applicant knew that it was in violation when the structure was built. He wasn't sure how to answer. He wanted to hear what other Board members said.
L. Horning asked when they began construction of the deck. The memo read went back to Nov. 2013. Applicant said it was probably a little before that date. L. Horning didn't feel there was substantial work done. It was in beginning stages and they informed him he needed a permit. Applicant said it was built. Someone called and he had to apply.
M. Thornton asked what kind of work he did. Applicant said he frames houses.
M. Thornton said applicant was familiar with building permits.
N. Langlais said yes and no. He is more getting structures up.
L. Harten asked if the work he did was done after the permits are in place and then he goes and frames it. Applicant said yes.
M. Thornton said he was having difficulty with this question. As L. Harten said, they can't know the answer objectively. They only know the building permit wasn't obtained, not why. They know if a building permit had been applied for they would have to do the process in the right order. If they allow or encourage this kind of retrograde they are encouraging people to work without building permits and getting what they want after the fact. He referred to a news story where a doctor in Virginia was forced to tear down a $750,000 house because it was noncompliant and built without a permit. He didn't know if that applied here, but after listening to pros and cons, assuming the violation into the setback area was not noticed by the builder, just as the applicant assumed he didn't need a permit. That is a dangerous thing to do.
L. Horning said she understood the frustration of the abutters in not understanding what the Board is looking at. Their job wasn't to look at emotional things. They can weigh consideration of property values. It came down to the wording of the ordinance and how they have to abide by what the voters put in place. It is interpretation of the ordinance. "The violation was not noticed or discovered until after the structure in violation was substantially completed or until after a lot had been subdivided by conveyance." For her, this question was a clear yes. They had substantially completed the deck after a formal complaint. There was no survey in place. This question was unequivocally yes for her.
J. Dargie agreed. Question 2 would address M. Thornton's comment. The violation was not noticed. It was clear by the letter.
M. Thornton agreed the town didn't know. It was not the Town's responsibility to know. The answer to question as worded is yes.
F. Seagroves agreed. They were talking about the violation being noticed. They weren't talking about what caused the violation. When they get to question 2, that makes it more difficult. Violation was not noticed until after structure was completed but it could have started.
L. Horning said they don't know which entity is referred to – The homeowner? The town? Who is supposed to be noticing?
L. Harten said he guessed he would have to answer yes. In spite of the fact that no building permit was applied for. He could understand why the applicant or owner could have constructed a deck because it sits in from the existing structure. His initial reaction was it was a continuation of a nonconforming use but they had been told that is not the case. He still believed that to be true. He would answer yes.

2. That the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent or representative, but was instead caused by either a good

faith error in measurement or calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

L. Horning will look at the language. The violation is not an outcome or ignorance of the law Ordinance, "failure to inquire." The Board knows there was no municipal office involved. They knew many people in town make bad faith estimates about their property. Everyone has at some point. She struggled with failure to inquire because they were dealing with someone familiar with construction. But as the applicant stated, he is a framer. From her experience many times framers do not have a lot to do with the permit process. She couldn't speak to this applicant, but his testimony stated he was not aware. Regarding obfuscation, misrepresentation or bad faith, looking at the footprint of the house it seemed reasonable to follow that. She might have made the same error prior to sitting on the Board. In this case, based on testimony of the applicant that he didn't have bad faith he followed the footprint, and there is nothing in the memo or anything from the town stating it was deliberate bad faith other than the memo for cease and desist telling him to file an application.

L. Harten said that was subsequent to it being built.

L. Horning said that was her point. If it was after it was constructed they had no way to know that.

M. Thornton said he was being punished for inquiring and getting a building permit and following the letter of the law because he built a garage with a structure above that was to be occupied. He was allowed to build and told to meet all codes. After it was completed he was told that no one could occupy it. In that case, he got a building permit and did everything by code. He said he wasn't a builder or framer.

L. Horning asked why no one was allowed to occupy it.

M. Thornton said it doesn't apply. What does apply is that there is a procedure of what is supposed to be done.

L. Horning said they had testimony of the applicant was that he in good faith followed the footprint of the house and had no prior knowledge , before receiving the warning to stop, that he had to have a permit. She didn't disagree with Mr. Thornton

M. Thornton said he found it difficult to reconcile that statement with the applicant being involved in the building trade. He and L. Horning had a brief discussion as to whether framers are involved with or have knowledge of permitting requirements. L. Horning said she couldn't answer that question. She is basing it on applicant's testimony. They agreed to disagree.

L. Harten agreed with L. Horning. He believed it was good faith error on the part of the applicant and as a result of following the footprint of the house. A building permit should have been obtained and applicant will have to pay the consequences for not doing that.

M. Thornton questioned what the consequences were.

L. Harten didn't know. Probably should have asked that.

F. Seagroves asked if there was a fine.

K. Bauer said it would probably have to go through the court.

L. Harten believed it was a good faith error following the footprint of the existing structure.

J. Dargie agreed with L. Horning and L. Harten.

F. Seagroves struggled with this. He agreed with what L. Horning said. People should know that if you're going to build a structure outside, you need a permit. He had talked to some people that said they didn't want to apply because somebody might say no. That isn't a good excuse. As the memo from the building inspector said, he could have come for a special exception and would not be going through this. He was having a little problem but would go with not an outcome of ignorance of the law.

3. The physical or dimensional violation does not constitute a public or private nuisance no diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

M. Thornton said it is tough to say what use the abutter would like to make of the property he has because it takes away from his ability to get relief of the same nature before the fact. They have destroyed his ability to say he just didn't know. Answer seems to be that the physical or dimensional violation does constitute a nuisance for the immediate abutter. He didn't see any dimensional or violation or public nuisance but for the one abutter. He struggled with it because in his mind it is a problem for a professional or town doing an assessment would it be a diminishment of value of the property he's not qualified to address. He would say it didn't interfere with any future uses of the property, being his property. The way it is parsed, it is twisting language. If they said it doesn't constitute, the answer is yes it does not constitute a problem.

L. Harten said he didn't believe that the structure constituted a public or private nuisance nor cause any diminution of the value of the other property in the area. He didn't believe existing structure interferes with any future uses of the property in question.

L. Horning agreed. The Board had testimony from the applicant stating he has extensive real estate experience. They have seen other properties are dimensionally compacted with large porches on them, which is a factor to take into consideration.

M. Thornton said they were also nonconforming under today's code.

L. Horning said she wasn't so sure 4 ft. They were not talking about being on the neighbor's property. If he was back 4 ft. that deck would still exist.

M. Thornton said if he had gotten a building permit he could have avoided all the problems.

L. Horning said addressing it as it is and regarding interference. Physical and dimensional violation does not constitute a public or private nuisance or diminish the value of other property in the area; she would have to say that would be a yes because had the applicant been in the setback it would not be in front of the board.

J. Dargie agreed. She would have to say yes. In looking at it, there were only 17 ft. between the two properties. No matter what you did, it would be tight, so she would say yes.

F. Seagroves said regarding physical or dimensional violation does not constitute a public or private nuisance. He didn't think so, the deck is a little less than the footprint of the house. He didn't see it as a nuisance. As far as diminishing the value of the property in the area, most houses in the area have decks. It looks to him like it would improve the value. He didn't see interference with future uses of the subject property. He would have to say yes.

4. Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

F. Seagroves said, in other words, is it going to cost more to correct.

L. Harten said in his opinion the cost to correct this violation would mean either turning or removing it. Cost, time and effort to do that would outweigh any public benefit to be gained. It would be inequitable to require the violation to be corrected. He also wanted to say they were not setting a precedent here so that anybody that wants to put up a deck or porch or addition without getting a building permit, they need to get a permit.

L. Horning said they have had people remove things from their property.

F Seagroves said they have had people remove additions.

L. Horning said the public would not gain by having the abutter disassemble the shed and move it back 4 ft. The cost to the applicant far outweighed any gain to the public in looking at the construction with the roof. She would like the Board to make sure the steps

were removed immediately. That was inexcusable. She would like a condition that the steps be removed and that to be framed up and no steps allowed on that side of the building, ever.
M. Thornton said there would be some cost, but since he did the work himself the main cost would be to the abutter in labor. He would say yes, and struggle with it.
J. Dargie said her thinking was going was that as far as outweighing the public gain. If he is made to take the deck down, what is to prevent the owner from lining up chairs and sitting on the edge and you have a little thing going between the two properties. The deck looks nice and not a permanent structure. Obviously without those stairs the deck will go up to the wall; people will stay on the deck. The cost of correction far outweighs any public gain.
F. Seagroves agreed. Taking it down and moving it over to 15 ft. from the property line would be more costly than the public would gain. It is within the footprint of the house which is already in violation.
L. Horning said that was something they spoke to before. Every property is unique and this is a densely populated area. It didn't excuse what the homeowner had done. It was a 4 ft. encroachment into the setback. It wasn't encroachment onto someone else's property.
F. Seagroves said the property is unique. Being an owner of a quarter of an acre, his rear setback is probably about 5 inches and he could understand what was going on here. He would also say yes.
F. Seagroves asked for other comments from the Board.
L. Harten asked about placing a condition about the stairs.
L. Horning said she would like a condition that those stairs be removed immediately and not to be allowed ever on that side of the deck. She made a motion to that effect.
M. Thornton seconded.

Vote on conditions:
J. Dargie – yes; L. Harten – yes; F. Seagroves – yes; M. Thornton – yes; L. Horning – yes; Z. Tripp – yes
The Board proceeded to vote on the criteria:
1. Was the violation not noticed or discovered until after the structure was substantially completed?
L. Horning – yes; L. Harten – yes; M. Thornton – would like to see the language cleaned up on that. He would say yes, but not noticed by the town; J. Dargie – yes; Seagroves – yes
2. Was the violation not an outcome of ignorance of the law or caused by a good faith error or has existed for ten years or more?
L. Harten – yes; M. Thornton – no; J. Dargie – yes; L. Horning – yes; F. Seagroves – yes
3. Does the dimensional violation not constitute a public or private nuisance nor diminish the value of other property in the area or interfere with permissible use of the property?
M. Thornton – yes; J. Dargie – yes; L. Horning – yes; L. Harten -yes; F. Seagroves –yes
4. Does the cost of correcting the violation outweigh any public benefit to be gained?
J. Dargie – yes; M. Thornton – yes; L Horning – yes; L. Harten – yes; F. Seagroves – yes
There was a motion by L. Horning to approve Case #2014-08 with condition attached.
L. Harten seconded.
Final Vote:
L. Horning – yes; L. Harten – yes; M. Thornton – yes; J. Dargie – yes; F. Seagroves – yes.

Case # 2014-08 was approved by unanimous vote. The Chair informed the applicant his application was approved and informed him of the 30-day appeal period.

R. Todd asked if the only condition was the removal of the stairs.
F. Seagroves said it was.
J. Dargie added, whatever the Building Dept. said, also. He will have to get a permit.
M. Thornton said to never again use that as an excuse.
F. Seagroves turned the meeting back over to Chairman Tripp.